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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,043	01/20/2004	Stephen Handley	WH 12 254US	7102

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DENNISON ASSOCIATES  
133 RICHMOND STREET WEST  
SUITE 301  
TORONTO, ON M5H 2L7  
CANADA

EXAMINER

BATSON, VICTOR D

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/759,043

Applicant(s)

HANDLEY, STEPHEN

Examiner

Victor Batson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Objections***

Claims 1,3-10,12-17 are objected to because of the following informalities: In claim 1 line 10, it appears that the phrase "less that" should be "less than". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-6,8,10,12 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitnum (210,732).

Whitnum discloses a cleaning tool comprising a handle (A) extending rearwardly from a first "U" shaped scoop (B) opening upwardly with opposed sidewalls, a bottom, an end wall and a front edge opposite the end wall. Whitnum further discloses said handle (A) being shaped to define a second "U" shape scoop opening downwardly and defining a capacity which is only a small portion of the capacity of the first "U" shaped scoop as shown in figures 1 & 2. Additionally, Whitnum discloses the second scoop including a tab with a port (not identified with a letter, but shown in figures 1 & 4) at the front edge for hanging the tool when not in use.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7,13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitnum (210,732) in view of Spear et al. (5,975,601).

Whitnum discloses a cleaning tool as described previously, but lacks including gradient markings on an interior surface of the scoop.

Spear et al. teaches that it is known in the art to include gradient markings 48 on a scoop to allow the tool to be used as a measuring tool to assist the user (col 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Whitnum by including gradient markings on the scoop as taught by Spear et al., to allow the user to use the tool as a measuring device.

Concerning claim 7, in figure 2A, Spear et al. shows the section of the handle near the scoop 12 having an increased thickness as compared to the handle section near the lead lines for reference numbers 23 & 14. It is well known to form the section of a hand tool with increased thickness in the area where the handle meets the tool since this is a high stress area.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Whitnum by reinforcing the handle where it connects to the scoop by increasing its thickness as taught by Spear et al., since this is a known way to reinforce the high stress area where the handle connects to a scoop.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitnum (210,732).

Whitnum discloses a cleaning tool as described previously, but lacks disclosing that the tab is removable.

It would have been obvious to one of ordinary skill in the art to form the tool with a removable tab since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

### ***Response to Arguments***

Applicant's arguments filed 7/22/05 have been fully considered but they are not persuasive. Applicant argues that the device of Whitnum is not disclosed as being used as an eavestrough cleaning tool or that the handle is used as a second scoop. Applicant's arguments however are more limiting than the claims themselves, and the examiner notes that applicant has claimed a cleaning tool and the device of Whitnum is clearly a cleaning tool. Additionally, it is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 29, 2005



Victor Batson  
Primary Examiner  
Art Unit 3671